RECORDING REQUESTED BY:

Mesa Union School District 3901 North Mesa School Road Somis, California 93066

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control 9211 Oakdale Avenue Chatsworth, California 91311 Attention: Javier Hinojosa, Unit Chief 20090604-00091926-0 1/17

Ventura County Clerk and Recorde James B. Becker, Assistant 06/04/2009 08:21:33 AM 318462 \$.00 VI

Space Above for Recorder's Use Only

NO FEE. GOVERNMENT CODE SEC. 6103

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

(Re: County of Ventura Portion of APN 109-0-050-100, New Parking and Playground Facilities, DTSC Site Code 304572)

THIS COVENANT AND AGREEMENT (this "Covenant") is made by and between MESA UNION SCHOOL DISTRICT ("Covenantor"), the current owner of property situated in Somis, County of Ventura, State of California, described in Exhibit B-2 (the "Site"), and the DEPARTMENT OF TOXIC SUBSTANCES CONTROL (the "Department"). Pursuant to Civil Code Section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the property of hazardous materials as defined in Health and Safety Code Section 25260. Covenantor and the Department (collectively, the "Parties") hereby agree, pursuant to Civil Code Section 1471 and Health and Safety Code Section 25355.5 that the use of the property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, Title 22, Section 67391.1.

ARTICLE I

STATEMENT OF FACTS

- 1.01. The property totals approximately 14.3 acres and is located within the Mesa Union School District's boundary, described in the legal description in_Exhibit "A" and depicted in Exhibit "B-1." The property's common address is 3901 North Mesa School Road, Somis, California 93066 and is also referred to as Ventura County Assessor's Parcel No. 109-0-050-100.
- 1.02. A limited portion of the property is more particularly described as the cross hatched area on the map in Exhibit "B-2", and is known as the "Site." The Site consists of approximately 5.13 acres and is entirely located within the confines of the property.
- 1.03. A Preliminary Environmental Assessment ("PEA") was conducted in November 2007. The results of the investigation indicated that low levels of organochlorine pesticides ("OCPs") are present in the shallow soils of the Site. The PEA Report was made available to the public for review and comment from November 14, 2007 through December 18, 2007; no public comments were received. DTSC approved the PEA on February 19, 2008. A factsheet describing the Land Use Covenant at Mesa School and requesting additional public comments was available from April 7 through May 6, 2008, no additional public comments were received.
- 1.04. The OCP levels detected in shallow soils are not acceptable for unrestricted land use. These levels exceed the Department's School screening levels. The levels of toxaphene (3,800 ug/kg) exceed health protective levels (460 ug/kg). The PEA concluded that a release or threatened release of the OCPs present at the Site pose a threat to public health or the environment under unrestricted land use. However, these concentrations are acceptable for risk management purpose using the California Environmental Protection Agency school-based exposure scenario for the duration of child exposure during school hours and duration of occupational exposure of staff. Therefore, the Department finds that this land use covenant restricting certain residential use is required at the Site.

ARTICLE II

DEFINITIONS

- 2.01. <u>Department</u>. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.
- 2.02. <u>Environmental Restrictions</u>. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions and terms and conditions as set forth in any Section of this Covenant.
- 2.03. <u>Improvements</u>. "Improvements" includes, but is not limited to, buildings, structures, roads, driveways, improved parking areas, wells, pipelines or other utilities.
- 2.04. <u>Lease</u>. "Lease" means lease, rental agreement or any other document that creates a right to use or occupy any portion of the Site.
- 2.05. Occupant. "Occupant" means Owners or any person or entity entitled by ownership, leasehold or other legal relationship to the right to occupy any portion of the Site.
- 2.06. Owner. "Owner" means Covenantor, its successors-in-interest or their successors-in-interest, including heirs and assigns who at any time hold title to all or any portion of the Site.

ARTICLE III GENERAL PROVISIONS

- 3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Site and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the Site; (c) is for the benefit of and is enforceable by the Department; and (d) is imposed upon the entire Site unless expressly stated as applicable only to a specific portion thereof.
- 3.02. <u>Binding Upon Owners/Occupants</u>. Pursuant to the Health and Safety Code, this Covenant binds all Owners of the Site, their heirs, successors and assigns and the agents, employees and lessees of the owners, heirs, successors and assigns. Pursuant to Civil Code Section 1471, all successive owners of the Site are expressly bound hereby for the benefit of the Department.
- 3.03. <u>Incorporation into Deeds and Leases</u>. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Site.
- 3.04. Conveyance of Site. The Owner shall provide written notice to the Department no later than thirty (30) days after any conveyance of any ownership interest in the Site (excluding leases and mortgages, liens and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Site and shall reference the Property name and Site Code as listed on Page 1 of this Covenant. The notice shall include the Assessor's Parcel Number ("APN") noted on Page 1. If the new owner's property has been assigned a different APN, each such APN that covers the Site shall be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order or by a specific provision of this Covenant.
- 3.05. Costs of Administering the Covenant to Be Paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of

this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the owner agrees to pay the Department's cost in administering this Covenant...

ARTICLE IV RESTRICTIONS

- 4.01. <u>Prohibited Uses</u>. The Site shall not be used for a residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- 4.02. <u>Soil Management</u>. A soil management plan is not required for the Site. However, if soil is going to be moved outside of the Site boundaries, the Covenantor must seek prior written DTSC approval. In addition, the Covenantor must document all soil management activities conducted on the Site and make that information available to DTSC upon request.
- 4.03. Access for Department. The Department shall have reasonable right of entry and access to the Site for inspection, monitoring and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health, safety or the environment.
- 4.04.. <u>Inspection and Reporting Requirements</u>. The Owner shall conduct an annual inspection of the Site verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each calendar year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation:

determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 days of its original transmission.

ARTICLE V ENFORCEMENT

5.01. <u>Enforcement</u>. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any improvements constructed or placed upon any portion of the Site in violation of this Covenant. Violation of this Covenant, including, but not limited to, failure to submit or the submission of any false statement, record or report to the Department shall be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI

VARIANCE; TERMINATION; TERM

- 6.01. <u>Variance</u>. Covenantor, or any aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233.
- 6.02. <u>Termination or Partial Termination</u>. The Owner, or any aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Site. Such application shall be made in accordance with Health and Safety Code Section 25234.
- 6.03. <u>Term.</u> Unless ended in accordance with Section 6.2, by law or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

- 7.01. <u>No Dedication Intended</u>. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Site, or any portion thereof, to the general public or anyone else for any purpose whatsoever.
- 7.02. <u>Recordation</u>. Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Ventura within ten (10) days of Covenantor's receipt of a fullyexecuted original.
- 7.03. Notices. Whenever any person gives or serves any Notice ("Notice") as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be effective (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (b) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Mesa Union School District 3901 North Mesa School Road, Somis, California 93066; Attention: Dr. John Puglisi, Superintendent:

To: Javier Hinojosa, Unit Chief Schools Unit - Chatsworth Office Brownfields & Environmental Restoration Program Department of Toxic Substances Control Department: 9211 Oakdale Avenue Chatsworth, California 91311

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in accordance with this Section.

7.04. Partial Invalidity. If this Covenant or any of its terms is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this

Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

- 7.05. Statutory References. All statutory references include successor provisions.
- 7.06. <u>Incorporation of Attachments</u>. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

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Dated:	1.	٥	, 2009

MESA UMON SCHOOL DISTRICT

By_

John Puglisi, Superintendent

Dated: March 30, 2009

DEPARTMENT OF TOXIC SUBSTANCES

CONTROL

Jąvier Hinojosa, Unit Chief

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)			
COUNTY OF VENTURA)		*	
On Apr. 1 7th	2009,	before	me,
On Apr. 1 7th, Benjamin J Swan, a Notary Public	c, personally	appeared Jo	hn Puglisi,
who proved to me on the basis of satisfactory evider			
subscribed to the within instrument and acknowledge	d to me that	he executed t	the same in
his authorized capacity and that by his signature on th	ne instrumen	t the person,	or the entity
upon behalf of which the person acted, executed the	e instrument	•	
I certify under PENALTY OF PERJURY under	the laws of t	ne State of Ca	lifornia that
the foregoing paragraph is true and correct.			
		*	
WITNESS my hand and official seal.			
		4	

BENJAMIN J. SWAN
Commission # 1792391
Notary Public - California
Ventura County
MyComm. Expires Feb 29, 2012

Notary Public

LEGAL DESCRIPTION OF THE PROPERTY POST LOT LINE ADJUSTMENT

PARCEL MAP WAIVER No. SD08-0036 (LOT LINE ADJUSTMENT)

EXHIBIT "A"

PARCEL 1

That portion of Lot 56 of Rancho Santa Clara del Norte, in the unincorporated territory of the County of Ventura, State of California, as per the map recorded in Book 3, Page 26 of Miscellaneous Records (Maps) in the office of the County Recorder of said County, described as follows:

Beginning at the most westerly corner of said Lot 56; thence along the boundary of said Lot by the following two courses:

1st: South 50°20'00" East 2994.42 feet; thence,

2nd: North 52°15′00" East 738.90 feet to the southeasterly terminus of the line described in the seventh course of the Grant Deed recorded June 1, 1933, in Book 401, Page 147 of Official Records of Ventura County; thence along the boundary of said Grant Deed by the following five courses:

3rd: North 37°45'00" West 149.42 feet; thence,

4th: North 60°20'30" East 163.20 feet; thence,

5th: North 89°00'00" East 110.00 feet; thence,

6th: North 69°00'00" East 240.00 feet; thence,

7th: South 79°30′00" East 340.00 feet to the intersection with the easterly line of said Lot 56; thence along said easterly line,

8th: North 2097.57 feet to the intersection with the easterly prolongation of a line, parallel with and 150.00 feet southerly of, measured at right angles, the southerly line of the land described in Parcel 1 of the Grant Deed recorded November 21, 1950, in Book 965, Page 527 of Official Records of Ventura County; thence along said parallel line and prolongation,

9th: West 595.00 feet to the intersection with the southerly prolongation of the westerly line of said Parcel 1; thence along said westerly line and prolongation,

10th: North 806.98 feet to the intersection with the northerly boundary of said Lot 56; thence along said northerly boundary by the following five courses:

11th: South 47°00'00" West 458.26 feet; thence,

12th: South 67°00'00" West 185.46 feet; thence,

13th: North 83°00'00" West 394.68 feet; thence,

14th: South 64°00'00" West 527.34 feet; thence,

15th: South 62°00′00" West 200.96 feet to the intersection with the northeasterly line of Parcel 79616-1, as described in the Grant Deed recorded July 10, 2008 as Document No. 20080710-00106680 of Official Records of Ventura County; thence along the boundary of said Parcel 79616-1 by the following three courses:

16th: South 28°02'56" East 12.14 feet; thence,

17th: South 62°00'00" West 98.43 feet; thence,

18th: North 28°02′56" West 12.14 feet to the intersection with the northerly boundary of said Lot 56; thence along said northerly boundary by the following three courses:

19th: South 62°00'00" West 92.65 feet; thence,

20th: South 53°00'00" West 1092.96 feet; thence,

21st: South 58°30'00" West 496.32 feet to the point of beginning.

<u>SUBJECT TO</u> easements for public highway purposes, as granted to the County of Ventura per the document recorded June 17, 1916, in Book 150, Page 217 of Deeds, records of Ventura County, and the document recorded November 5, 1931, in Book 358, Page 131 of Official Records of Ventura County.

PARCEL 2

Those portions of Lots 36 and 56 of Rancho Santa Clara del Norte, in the unincorporated territory of the County of Ventura, State of California, as per the map recorded in Book 3, Page 26 of Miscellaneous Records (Maps) in the office of the County Recorder of said County, described as follows:

Beginning at the intersection of the northerly boundary of said Lot 36, and a line, parallel with and 150.00 feet easterly of, measured at right angles, the common line of said Lots 36 and 56; thence along said parallel line,

1st: South 891.00 feet to the intersection with the easterly prolongation of a line, parallel with and 150.00 feet southerly of, measured at right angles, the southerly line of the land described in Parcel 1 of the Grant Deed recorded November 21, 1950, in Book 965, Page 527 of Official Records of Ventura County; thence along said parallel line and prolongation,

2nd: West 745.00 feet to the intersection with the southerly prolongation of the westerly line of said Parcel 1; thence along said westerly line and prolongation,

3rd: North 806.98 feet to the intersection with the northerly boundary of said Lot 56; thence along said northerly boundary by the following two courses:

4th: North 47°00'00" East 123.20 feet; thence,

5th: East 654.90 feet to the point of beginning.

<u>SUBJECT TO</u> an easement for public highway purposes, as granted to the County of Ventura per the document recorded June 17, 1916, in Book 150, Page 217 of Deeds, records of Ventura County.

ALSO SUBJECT TO an easement for public road and/or highway purposes, as granted to the County of Ventura per the document recorded February 16, 1917, in Book 154, Page 308 of Deeds, records of Ventura County.

PARCEL 3

Those portions of Lots 36 and 37 of Rancho Santa Clara del Norte, in the unincorporated territory of the County of Ventura, State of California, as per the map recorded in Book 3, Page 26 of Miscellaneous Records (Maps) in the office of the County Recorder of said County, described as follows:

Beginning at the intersection of the northerly line of said Lot 36, and a line, parallel with and 150.00 feet easterly of, measured at right angles, the westerly line of said Lot 36; thence along said parallel line,

- 1st: South 891.00 feet to the intersection with the easterly prolongation of a line, parallel with and 150.00 feet southerly of, measured at right angles, the southerly line of the land described in Parcel 1 of the Grant Deed recorded November 21, 1950, in Book 965, Page 527 of Official Records of Ventura County; thence along said prolongation,
- 2nd: West 150.00 feet to the intersection with the westerly line of said Lot 36; thence along said westerly line and the westerly line of said Lot 37,
- 3rd: South 4806.12 feet to the most southerly corner of said Lot 37; thence along the southerly boundary of said Lot 37 by the following nine courses:
- 4th: North 65°15'00" East 105.60 feet; thence,
- 5th: North 75°45'00" East 145.20 feet; thence,
- 6th: North 62°45'00" East 297.00 feet; thence,
- 7th: North 68°30'00" East 181.50 feet; thence,
- 8th: North 55°15'00" East 181.50 feet; thence,
- 9th: North 40°00'00" East 184.80 feet; thence,
- 10th: North 32°45'00" East 165.00 feet; thence,
- 11th: North 55°30'00" East 99.00 feet; thence,
- 12th: North 77°45′00" East 216.48 feet to the intersection with the easterly line of said Lot 37; thence along said easterly line and the easterly line of Lot 36,
- 13th: North 4928.88 feet to the northeasterly corner of said Lot 36; thence along the northerly line of said Lot 36,

14th: West 1170.00 feet to the point of beginning.

Larry J. Frager

L.S. 7998 (Expires 12/31/06)

No. 7998

Exp. 12/31/08



